IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/08/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.2009 of 2002
and
C.M.P.No.17333 of 2002

1. Nachiammal
2. Venkatachalapathy
3. Thangaraj
4. Gopalakrishnan
5. Krishnamoorthy .. Appellants

-Vs-

1. Ekanathan
2. Secretary
Kulithalai Co-op. Building
Society,
R.No.926, Kaveri Nagar,
Kulithalai. .. Respondents

This second appeal is preferred under Sec.100 of The Code of Civil Procedure against the judgment and decree dated 27.2.2002 made in A.S.No.4 of 2000 on the file of the Subordinate Judge, Kulithalai confirming the judgment and decree dated 24.2.1999 made in O.S.No.94 of 1995 on the file of the District Munsif, Kulithalai.

!For Appellants : Mr.S.Parthasarathy
for M/s.Sarvabhauman
Associates

^For Respondents : Mr.G.Vasudevan for R1

Mr.G.R.M.Palaniappan for R2

:JUDGMENT

Both sides are heard. No case is made out for admitting this second appeal, since the Court is unable to notice any question of law, much less substantial question of law.
2. It was a suit for permanent injunction in respect of 'B' Schedule property alleging that the property is situated on the northern side of the property of the plaintiffs; that there was an agreement between the parties, marked as Ex.A3, in the year 1979, wherein it has been stated that the

property should be left vacant; that the plaintiffs have got right to use it; and that during the force of the said agreement A-3, the respondents/defendants have made unlawful constructions what is shown as 'C' Schedule property in respect of which, the plaintiff has asked for a mandatory injunction for the removal of the unlawful constructions. The suit was contested by the respondents/ defendants before the trial Court interalia stating that it is true that there was an agreement between the parties in the year 1979 marked as Ex.A3, but, subsequently, the same was superseded under Ex.B1 agreement, in the year 1988, as per which, the defendants were permitted to raise the wall abutting the property of the appellants/plaintiffs; that the defendants have accordingly done so, and hence, as per the agreement found under Ex.B1, the plaintiffs had no property or right over anything on the north of their property found as 'A' Schedule to the plaint.

3. Necessary issues were framed. After full trial, the learned trial Judge has dismissed the suit, which was also confirmed by the first appellate Court. Aggrieved over the same, the plaintiffs have brought forth this second appeal.

4. At the outset, the Court has to necessarily point out that on the facts put forth by both sides, both the Courts below have recorded a concurrent finding, and therefore, it does not require any interference. Secondly, the case of the plaintiffs was that the property in question in respect of which the relief was sought for namely 'B' Schedule property, a part of which is shown as 'C' Schedule, is situated on the north of their property, which is not in controversy. It is the further case of the plaintiffs that as per the agreement entered into in the year 1979 under Ex.A3, 'B' Schedule property was to be left vacant, but, in breach of the covenants found in Ex.A3 agreement, the defendants have raised the construction. On the contrary, the defendants' plea was that the said agreement A-3 was superseded in the year 1988 under Ex.B1 agreement. The learned Counsel for the appellants put forth before this Court that Ex.A3 agreement was admitted by the defendants' side; that so far as Ex.B1 agreement was concerned, it was denied by the plaintiffs, and hence, the second appeal has got to be admitted, and both the Courts without analysing the the evidence properly, dismissed the suit. The Court is unable to see any merit in this contention. Ex.A3 agreement entered into between the parties in the year 1979 is not disputed by the defendants. But, the defendants came with a plea that an agreement was entered into between the parties in the year 1988 under Ex.B1. Both the Courts have pointed out that under Ex.B1, the defendants were permitted to raise the wall just abutting the property of the plaintiffs shown as 'A' Schedule. From the evidence, as pointed out by the Courts below, it would be clear that the defendants have raised a wall as found under Ex.B1 agreement, and in order to come out from the clutches of Ex.B1 agreement, the plaintiffs in their averments in the plaint have not stated about Ex.B1, nor did they whisper anything about the wall that was raised by the defendants. Both the Courts have also pointed out that the fourth plaintiff as P.W.1 has categorically admitted that the said wall abutting the 'A' Schedule property of the plaintiffs was raised by the defendants even before filing the suit. Not only this fact is suppressed by the plaintiffs in the plaint, but no relief has also been sought for in that regard. This would be clearly indicative of the fact that the plaintiffs have suppressed the true state of affairs, but have come forward with a suit like this. In a case, where not

only the factual position but also the necessary true facts are suppressed, the same would be suffice to refuse the relief asked for. Hence, the Court is unable to notice any substantial question of law to be formulated in this appeal for consideration, in view of the concurrent finding recorded by both the Courts below in dismissing the suit.

5. Therefore, this second appeal does not require admission, and the same is dismissed at the admission stage itself. No costs. Consequently, connected C.M.P. is also dismissed.

Index: Yes
Internet: Yes

To:

1) The Subordinate Judge, Kulithalai.
2) The District Munsif, Kulithalai.
nsv/